

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 14300 of 2006(B)

PETITIONER:

**T.R. THANKAPPAN, PUSHPAVILASOM,
PATTATHANAM, KADAPPAKADA, KOLLAM.**

**BY ADV. SRI.P.SANTHALINGAM
SRI.S.SHARAN**

RESPONDENTS:

- 1. UNION OF INDIA, REP. BY THE SECRETARY
HOME AFFAIRS, FREEDOM FIGHTER'S DIVISION,
LOK NAYAK BHAVAN, NEW DELHI.**
- 2. STATE OF KERALA, REP. BY THE
COMMISSIONER, AND SPECIAL SECRETARY TO
GOVERNMENT, GENERAL ADMINISTRATION
(FREEDOM FIGHTERS PENSION) DEPARTMENT,
THIRUVANANTHAPURAM.**
- 3. DISTRICT ADVISORY COMMITTEE,
FOR FREEDOM FIGHTERS PENSION,
REP. BY DISTRICT COLLECTOR, KOLLAM.**

**BY ADV. SMT.MINI R.MENON, ADDL.CGSC
GOVERNMENT PLEADER SRI.K.V.MANOJ**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

W.P.(C) NO.14300/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE CERTIFICATE DTD. 10.8.72 ISSUED BY GOVINDAN NAIR, MINISTER FOR TRANSPORT & ELECTRICITY.

EXT.P2:- COPY OF THE ORDER NO.D.DIS 40302/82/NI. DT. 13.7.83 ISSUED BY DISTRICT COLLECTOR, QUILON.

EXT.P3:- COPY OF THE CO-PRISONER CERTIFICATE DT. 22.8.89 ISSUED BY SRI.S.PARAMU (HOLDER OF THAMRAPATRA)

EXT.P4:- COPY OF THE LETTER DT. 21.2.95 SENT BY THE PETITIONER TO THE UNDER SECRETARY TO THE GOVERNMENT OF KERALA GENERAL ADMINISTRATION (FFPA) DEPT., THIRUVANANTHAPURAM.

EXT.P5:- COPY OF THE LETTER DT. NO.16701/FFP.A3/95 /GAD 24/3/95 FROM THE ADDL.CHIEF SECRETARY TO GOVERNMENT TO THE PETITIONER.

EXT.P6:- COPY OF THE LETTER NO.81500/FFP.A3/97/GKD ISSUED BY PRL.SECRETARY TO GOVERNMENT TO THE SECRETARY TO GOVERNMENT OF INDIA, MINISTRY OF HOME AFFAIRS FF DIVISION, LOK NAYAK BHAVAN, NEW DELHI.

EXT.P7:- COPY OF THE LETTER DT. 13.3.99 SENT BY CHITHRANJAN TO THE MINISTER FOR HOME AFFAIRS.

EXT.P8:- COPY OF THE LETTER DT. 16.3.99 ISSUED BY MINISTER FOR HOME AFFAIRS TO CHITHRANJAN.

EXT.P9:- COPY OF THE LETTER DT. 26.9.2000 ISSUED BY GOVERNMENT OF INDIA TO THE PETITIONER./

EXT.P10:- COPY OF THE JUDGMENT DT. 17.5.05 IN OP. NO.25151/01 IN THE HIGH COURT OF KERALA.

EXT.P11:- COPY OF THE LETTER DT. 17.8.05 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.

EXT.P12:- COPY OF THE LETTER DT. 27.9.05 SUBMITTED BY THE PETITIONER TO THE UNDER SECRETARY TO GOVERNMENT OF INDIA.

EXT.P13:- COPY OF THE CERTIFICATE DT. 16.10.82 ISSUED BY R.SANKARANARAYAN THAMPI.

/TRUE COPY/

P.A. TO JUDGE

T.R. Ramachandran Nair, J.

W.P.(C).NO.14300 of 2006-B

Dated this the 8th day of August, 2007

JUDGMENT

The petitioner herein is approaching this court for the second time for grant of pension under the S.S.S. Pension Scheme. The petitioner duly submitted an application for pension. Ext.P1 is the certificate issued by Shri M.N. Govindan Nair, former State Minister, certifying the eligibility of the petitioner. Ext.P2 shows that he was granted pension under the Kerala Freedom Fighters' Pension Scheme. The petitioner has also produced Ext.P3, a co-prisoner's certificate issued by Shri S. Paramu who was a recipient of Central pension and has certified that the petitioner was lodged in the same jail along with him during the period from 15.10.1121 to 18.5.1122. Earlier, his application was rejected as per Ext.P9 order. In fact, his application was duly recommended by the State Government as evidenced from Exts.P5 and P6. Ext.P9 was under challenge in O.P.No.25151/2001.

2. The matter was elaborately considered by a Division Bench of this court and by Ext.P10 judgment, it was found that the criteria fixed by the Government is satisfied by the petitioner. The order Ext.P9 was set aside

and the Government was directed to reconsider the application for SSS Pension. Thereafter, Ext.P11 was issued to him directing him to produce some additional acceptable documentary evidence in support of his claim. This was issued after finding that he did not satisfy the eligibility criteria and evidentiary requirement of the scheme. The petitioner has subsequently submitted Ext.P12 along with Ext.P13.

3. In the counter affidavit filed by the first respondent, it is stated that Ext.P11 is an order rejecting the claim of the petitioner after re-examining the matter in the light of the report of the State Government and documents and records. In view of the said stand, it is not necessary for this court to direct them to reconsider the matter again.

4. The view taken in Ext.P11 is that the petitioner has not submitted any primary documentary evidence from official records in support of his claim, secondary evidence (co-prisoners' certificate) is acceptable only if accompanied with valid non availability of records certificate which was not produced and there is discrepancy between the co-prisoner's certificate of Shri Pillai and that of the claim raised by the petitioner regarding the period of sufferings and that the mere fact that the State Government has granted pension, the same is not sufficient. Conspicuously, there is no discussion about the recommendation made by the State Government about the

application of the petitioner.

5. In the light of the clear findings in Ext.P10 judgment about the entitlement of the petitioner, what was expected of was only of an order sanctioning pension and not a reconsideration of the issue on the merits of the claim itself. A reading of Ext.P10 judgment shows that their Lordships have found that the reasons stated for the rejection are not acceptable. Mention has been made about the certificate issued by Shri M.N. Govindan Nair who was a veteran freedom fighter, Thamrapathra holder, Member of Parliament for number of times and also a State Minister for Transport and Electricity, as well as two co-prisoners' certificates produced by the petitioner. It was also observed that; "those two certificates were accepted in other cases as can be seen from Ext.P10 judgment." The Division Bench finally held in the light of the principles stated in **Gurdial Singh v. Union of India** (AIR 2001 SC 3883) and **Mukund Lal Bhandari v. Union of India** (AIR 1993 SC 2127), that "here the criteria fixed by the Government is satisfied by the appellant. However, the co-prisoner certificates submitted by the appellant along with the application were not taken into account by the authority. Recommendation of the State Government as well as the fact that he is in receipt of State pension was ignored while passing

Ext.P9 order.”

6. In the light of the above clear findings rendered by this court, the first respondent was not right in referring to another co-prisoner's certificate issued by Mr. Pillai and harping on a discrepancy with the period certified in that and that is claimed by the petitioner. The observations in Ext.P10 judgment will show that this court was satisfied about the certificate issued by Shri M.N. Govindan Nair and by two other co-prisoners. Ext.P3 certificate issued by Shri S. Paramu, the suffering of the petitioner has been clearly mentioned. This was Ext.P3 in O.P.No.25151/2001 also. Apart from that, when this court had directed the first respondent to consider the recommendation of the State Government as well as the fact that he is in receipt of State pension, the first respondent was not right in stating that the fact that he was receiving State pension, is not binding on the Central Government. Admittedly Ext.P10 judgment has become final, and matters concluded by that cannot be reopened. Therefore, the reasons stated in Ext.P11 are not sustainable at all. When the petitioner has produced acceptable co-prisoner's certificates, the first respondent was not right in ignoring them. There was no direction in Ext.P10 to produce any non availability of records certificate afresh and therefore the first respondent was not right in holding that there is absence of NARC. For all these

reasons, I find that since in Ext.P10, this court had found that the criteria fixed by the Government is satisfied by the petitioner, the authority was bound to pass consequential orders based on the co-prisoner's certificate produced by the petitioner. Since those co-prisoners' certificates have been found acceptable by this court in Ext.P10 judgment, it is not necessary to direct a reconsideration of the issue afresh.

7. The approach made by the first respondent is also not correct in the light of the principles stated in AIR 2001 SC 3883. Regarding the standard of proof required, their Lordships were pleased to hold as follows:

“The standard of proof required in such cases, is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about half a century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of “beyond reasonable doubt”. Once on the basis of the evidence it is probalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence.”

Here, by Ext.P10 judgment this court was pleased to observe about the importance of the recommendation of the State Government as well as the fact that petitioner was in receipt of State pension, in paragraph 4 of the judgment. It was held that while passing Ext.P9 order, the same were ignored by the authority. Hence, going by the principles stated by the Hon'ble Supreme Court, those too ought to have been relied upon to sanction pension to the petitioner in this case also.

Therefore, the writ petition is allowed and Ext.P11 is quashed. It is declared that the petitioner is entitled for the grant of pension under the SSS Pension Scheme. Going by the decision of a Division Bench of this court reported in **Union of India v. Radhamony** (2005 (4) KLT 27, the relevant date from which the pension is payable is from the date of receipt of the application. Consequential orders sanctioning the pension will be issued and the amount due will be disbursed within a period of three months from the date of receipt of a copy of this judgment.

(T.R. Ramachandran Nair, Judge.)

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